

Appl. No.: 10/723,079  
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Off. Act. Dated: 01/27/2005

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. Objection to Claims 6 and 11.

Claims 6 and 11 were objected to for informalities noted by the Examiner. In response, the Applicant has amended these claims in the manner suggested by the Examiner.

2. Rejection of Claims 1-8, 10-12, 19, 40-49 and 54 under 35 U.S.C. § 102(b).

Claims 1-8, 10-12, 19, 40-49 and 54 were rejected under 35 U.S.C. § 102(b) as being anticipated by Abraham (U.S. No. 5,592,482).

After carefully considering the grounds for rejection the Applicant responds as follows.

(a) Claim 1. Claim 1 is an independent claim describing "*an apparatus for controlling video and audio components distributed over a power-line communications (PLC) network*". In support of the rejection a number of elements are equated to aspects of Applicant's invention. In summary: (1) distribution box 12 of Abraham '482 was equated to Applicant's "*server*"; (2) selectors 22, 24, 26 or 28 of Abraham '482 were equated to Applicant's "*means for interpreting commands*".

However, these elements of Abraham do not comport to the claimed aspects of the invention as will be discussed below.

#### **CLAIM ELEMENTS NOT EQUIVALENT TO ABRAHAM TEACHINGS**

(1) **Server.** The Abraham '482 reference discusses the use of a set-top box having a remote control device for performing channel selection; a feature which is already being performed within current set-top boxes. Abraham does not describe the use of a server but instead described what could best be described as a "distributed set-top box". Abraham discloses a single media device wherein channel selections are

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made from a cable or other source into this single media device, specifically a set-top box. It can be readily seen that Abraham divides the functionality of multiple set-top boxes between a first and second portion, thus creating a set-top box which is "distributed" in two places across the power line communications (PLC) network. The first set-top box portion residing at an access to the cable and a second portion, coupled to the first portion via the home power line wiring, is configured for communicating channel selections to the first portion. Even the portions of the set-top box in Abraham are numbered to show their one-to-one relationship, with portions 14 and 36 in FIG. 1 both marked as PLVC 1 for communicating between Selector1 22 and TV1 44.

In addition, this one-to-one structure between PLVC1 sections 14, 36; PLVC2 sections 16, 38; PLVC3 sections 18, 40; and PLVC4 sections 20, 42, is not merely a "design choice". This can be readily seen from column 6, lines 10-16 of Abraham '482.

The term "server" is commonly understood to provide a one-to-many relationship, wherein the server can "serve" content to any devices connected on a network; and this is how the term "server" is used in Applicant's invention.

The device of Abraham is not capable of communicating with a plurality of media devices thus establishing this one-to-many server relationship. Each set-top box first portion of Abraham is configured for analog communication over a specific channel with specific set-top box second portion operating over that same frequency range and encoding. The purpose for this is discussed in the background of Abraham on as described at column 1, line 60 through column 2, line 4:

*"With the increasing number of stations available through cable television, users may require and/or desire access to all of the available stations. In the current cable television systems, all cable television channels are broadcast throughout the house over the coaxial cable. As the number of available channels approaches into the hundreds, the present system becomes*

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*unworkable as there is a limit of approximately 100 channels (of programming) which can be simultaneously broadcast over conventional coaxial cable in an uncompressed analog format. This results in a limitation of present cable distribution systems within a house or other structure."*

This analog nature taught by Abraham is not incidental as described in column 4, lines 1-4 of the Abraham reference.

*"System 10 is designed to operate using analog signals distributed throughout a home or building and thus, does not require more expensive digital to analog and analog to digital equipment necessary to make these conversions."*

It should be recognized that the communication between the halves of the distributed set-top box is proprietary in nature; therein it is not configured to provide for a client-server relationship as necessitated by the aspects recited in Applicant Claim 1.

By contrast, the instant application clearly describes client-server methodology and the ability to establish a one-to-many relationship. Although described in Claim 1, even more details of this is provided, such as in Claim 3 and in the specification of the instant application as exemplified by the following sections.

Paragraph 0086:

*"A client-server model is generally adopted in the present invention so that coordination of device operation may be readily performed without complex interoperability issues arising. It should be appreciated, however, that any of the devices may operate as a server, or alternatively that they communicate directly with one another within the system without the need of a dedicated server."*

Paragraph 0069:

*"It should be recognized that at least one PLC ready media device, and typically a plurality of said devices, would be coupled to the server over the PLC network."*

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(2) Means for interpreting commands. The Abraham reference does not teach the passing of commands from a remote control, THROUGH a first device and over a power line network for receipt and use by a second device, in this case a server, as required to comport to that aspect of Claim 1 .

It will be recognized by one of ordinary skill in the art that Applicant's invention can involve a modified device, such as a television, which normally receives a first group of commands and ignores commands outside of that first group; to instead pass those unknown commands over the power line network. The server is configured for receiving those commands from any number of non-dedicated media devices for controlling the communication of video and audio streams between media devices, such as to the device through which the commands were passed. These aspects are recited throughout Applicant's specification, such as the following paragraphs.

Paragraph 14:

*"In general, the system allows rerouting of remote control signals, such as from an infrared (IR) remote control transmitter to a server connected over the PLC network. Control signals from remote controls are routed from a receiving device, such as a television, to a server. Generally only selected control signals are routed, with device specific signals such as volume being responded to directly by the receiving device."*

Paragraph 105:

*"Referring to FIG. 1, the user enters commands on handheld remote control 32 for controlling operations of the VCR (or a particular VCR if more than one are located in the network). In this aspect of the invention the command parsing routines, or other programming within the television set (or other remotely controlled device), recognizes that the command does not match commands directed at the television set itself and thereby passes the commands through to the communication channel, which in this case is the PLC network."*

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*By passing through commands unknown to the television control circuits, functionality can be added to the network and controlled by a remote control device, without the need to update the software of the television (or other IR-equipped device which receives the commands).*"

Applicant system allows commands received THROUGH any media device while the content can be selected by the server from other media devices coupled to the power-line network. By contrast, Abraham '482 describes the halves of a set-top box communicating with one another over a dedicated channel carried over the power-line as described above.

Consequently, it has been shown that the cited reference can not be properly equated to the elements recited by Applicant's Claim 1.

#### DIFFERENT OBJECTS AND OPERATING PRINCIPLES

It is not surprising that the aspects recited in Applicant's Claim 1 do not comport with the teachings of the Abraham reference, because the purpose of Abraham and the principles of operation described by Abraham are not the same as in the invention described by the instant application.

As has been described above, Abraham does not teach the use of a "server" as that term is commonly known or described within the instant application, but instead teaches a distributed form of set-top box. The distributed set-top box of Abraham is configured with first and second halves which are adapted to communicate exclusively with one another in their own portion of the power line bandwidth. By contrast, the Applicant teaches a true "server" as that term is commonly known, which can communicate with any media device configured for operation over the power line network (PLC).

As a further indication of the different principles of operation, the Applicant teaches communicating commands, video and audio over the PLC network in a digital form. The term power line communications "network" itself is indicative of the use of

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digital signals, while the text and figures refer to its use specifically. For example, see paragraph 90 of the instant application:

*"The analog signals are encoded within A/D converters 80, 82, 84, 86 prior to MPEG processing. For example, analog NTSC video signals received from video one are analog-digital converted in A/D 80 and then MPEG encoded in MPEG encoder 88. Analog audio signals from audio one are analog-digital converted in A/D 82 and MPEG encoded in MPEG Encoder 88. Similarly, channel two video and audio signal are encoded in A/D converters 84, 86 and processed in MPEG encoder 90. Switch 92 allows connecting A/D 82 with MPEG encoder 88, these signals marked with a slash two ("2/") on the line indicate these as stereo signals."*

In addition, it can be seen from FIG. 2 that the encoders in the server utilize a standard digital encoding scheme, exemplified by an MPEG (Motion Picture Experts Group) standard.

In paragraph 97, it can be seen that a single digital communication stream from the server, including at least two video and audio streams 76, 78, are shown while other forms of communication, such as cable 16, IEEE 1394 ports and similar can be carried.

*"Multiplexer 96 operates to multiplex the input streams and couples the result to PLC Interface 116 which sends the streams to the power line through power plug 38, or a 1394 interface 120 which sends the streams through IEEE 1394 ports 122, 124."*

Accordingly, the invention by the Applicant operates according to different purposes and operating principles than are taught by the Abraham reference.

Therefore, Applicant respectfully submits that Abraham does not anticipate ALL claim elements as required to establish a Prima Facie case of obviousness, while the reference suffers from other intractable shortcomings. The Applicant respectfully requests that the rejection of Claim 1 and the claims that depend therefrom be

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withdrawn.

(b) Claim 2. Claim 2 is an independent claim describing *"an apparatus for controlling video and audio components distributed over a power-line communications (PLC) network"*.

The support provided for the rejection of Claim 2 is similar to that provided for Claim 1 above, and similarly it has intractable shortcomings. Abraham '482 describes a distributed set-top box, and not a client-server methodology over a network. Abraham is unable to communicate as a server with multiple media devices; which is implicit in the network described by the Applicant and further brought out with the amendment made to Claim 2.

Accordingly, Abraham does not disclose a server device configured for communicating with a plurality of media devices over the network, nor does it describe receipt of command codes from the plurality of media devices.

Therefore, Applicant submits that Claim 2 is not anticipated by the Abraham reference, and respectfully requests that the rejection of Claim 2 and the claims that depend therefrom be withdrawn.

(c) Claim 40. Claim 40 is an independent claim describing the media device for operation on the PLC network.

A number of aspects of Claim 40 have been improperly equated to elements within the Abraham '482 reference. The media device elements of Claim 40 is improperly equated to VCR 52 in Fig. 1 of Abraham. However, VCR 52 is not even configured for communicating over the power line. As described for previous independent Claim 1 and Claim 2, Abraham teaches a distributed form of set-top box, each having a first and second portion with a dedicated communication channel therebetween. This cannot be equated with a server as described by the Applicant in Claim 40.

Claim 40 has been amended to increase clarity and to add elements already

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recited in Claims 1 and 2. The language of amended Claim 40 clearly describes the communication of streams over the PLC and the apparatus operating as a client receiving commands from a server. Furthermore, amended Claim 40 describes the passing through of certain control signals, *"including those control signals which are not utilized by said media device"*. It should be appreciated that these elements are not taught by the Abraham reference, nor would they be obvious in view of that reference. These important aspects are well described in Applicant's specification, such as including but not limited to paragraphs 14, 69, 86, 90, 97 and 105.

Therefore, Applicant submits that Claim 40 is not anticipated by the Abraham reference, and respectfully requests that the rejection of Claim 40 and the claims that depend therefrom be withdrawn.

(d) Claim 48. Claim 48 is an independent claim describing the media device for operation on the PLC network. Support for the rejection of Claim 48 followed similar logic equating VCR 52 of Abraham as a media device according to Applicant claims and similarly equated elements which do not comport with one another.

Applicant points out that VCR 52 of Abraham does not even have a PLC interface, wherein it clearly does not anticipate the media device which provides a PLC interface. As described earlier, Abraham '482 also does not teach client devices which are configured for receiving streams from a server. Abraham is directed to utilizing analog communications which is frequency allocated between the two halves of each distributed set-top box. "Streaming media" by contrast is well understood in the industry to mean the rapid transmission of audio and video in packets over a network, typically utilizing an internet protocol; of which there is no mention or teaching in the Abraham reference. Throughout Applicant's specification the digital nature of the PLC communication is evident, for example in paragraph 0084: *"... is shown incorporating a PLC interface through which it sends or receives IP-based data over the power line."*



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Applicant has amended Claim 48 to recite certain elements with greater clarity, and to stress the digital communication client-server nature of the system.

Therefore, Applicant submits that independent Claim 48 is not anticipated by the Abraham reference, and respectfully requests that the rejection of Claim 48 and the claims that depend therefrom be withdrawn.

(e) Claims 3-8, 10-12, 19, 41-47, 49 and 54. Claims 3-8, 10-12, 19, 41-47, 49 and 54 are dependent claims within the instant application which depend from independent Claims 1, 2, 40 and 48.

Applicant has demonstrated that Claims 1, 2, 40 and 48 are not anticipated by the Abraham reference, wherein these dependent claims should be considered *a fortiori* allowable.

It should also be appreciated that many of the rejections of these dependent claims improperly equate claimed elements with aspects of the Abraham reference to which they do not properly comport. By way of example, Claim 19 describes how operating commands which are not utilized by the media device are routed to a server for controlling any of the media devices operably coupled to the server. Claims 43, 44 and 54 describe numerous examples of media devices, including television sets, which can be configured according to the invention; these are not taught within the Abraham reference which is directed at creating a distributed set-top box.

Accordingly, this group of dependent claims should be considered *a fortiori* allowable in view of the discussion regarding their respective base claims, while a number of these claims provide additional distinctions over the Abraham reference.

3. Traversal of Rejection of Claims 1 and 40; In re Donaldson.

The Applicant respectfully traverses the grounds for rejection, and cites *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994)(en banc) as the basis for the traversal. Independent Claims 1 and 40 are written in means plus function form pursuant to 35

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U.S.C. §112, sixth paragraph, and therefore, must be interpreted during examination under *In re Donaldson*.

In rejecting Claims 1 and 40, as well as the claims that depend therefrom, the Examiner made no specific fact findings as to the scope of equivalents for the means plus function elements in the claims. Instead, the Examiner appears to have followed the provisions of MPEP § 2183 ("Making a Prima Facie Case of Equivalence"), which states:

If the examiner finds that a prior art element performs the function specified in the claim, and is not excluded by any explicit definition provided in the specification for an equivalent, the examiner should infer from that finding that the prior art element is an equivalent, and should then conclude that the claimed limitation is anticipated by the prior art element. The burden then shifts to applicant to show that the element shown in the prior art is not an equivalent of the structure ... disclosed in the application. *In re Mulder*, 716 F.2d 1542, 219 U.S.P.Q. 189 (Fed. Cir. 1983). No further analysis of equivalents is required of the examiner until applicant disagrees with the examiner's conclusion, and provides reasons why the prior art element should not be considered an equivalent.

While the Examiner appears to have followed the provisions of MPEP §2183, such provisions are contrary to Federal Circuit law. The Federal Circuit has held that an examiner "*construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure ...described therein, and equivalents thereof,*" *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994)(en banc), and in so ruling expressly denied that "*the PTO is exempt from this mandate.*" *Id.* The Federal Circuit added that it was specifically overruling any precedent that suggested or held to the contrary. *Id.* at 1193-94. In response to the PTO's argument that the court's ruling conflicted with the principle that a claim should be given its broadest reasonable interpretation during prosecution, the Federal Circuit held that the *Donaldson* decision was setting "*a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation.'*" *Id.* at 1194. In other words, an examiner's claim interpretation is not "reasonable" if it is

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not based on the specification's description of the implementation of the means element of the claim. The court then said, "*Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such [means-plus-function] language when rendering a patentability determination.*" *Id.* at 1195.

Here, as in *Donaldson*, the Examiner is required by statute to look to the Applicant's specification and construe the "means" language as referring to corresponding means disclosed in the specification and equivalents thereof." See *id.* at 1195. However, the Examiner did not construe the means language of these claims, however. Nor did the Examiner find, on the basis of specific facts of record here, that the means disclosed in the Applicant's specification were equivalent to that of the cited references. Instead, as prescribed by MPEP §§ 2183-84, the Examiner simply presumed equivalence. The presumption methodology used here, which the MPEP prescribes, clearly conflicts with the requirements of the Federal Circuit's *Donaldson* decision. The approach taken by the Examiner in this case also conflicts with *In re Bond*, 931 F.2d 831 (Fed. Cir. 1990).

The specific point of these cases is that, in this context, limitations from the specification control the interpretation of the claim. Under §112, paragraph 6, a means-plus-function element of a claim must be construed to mean that which is disclosed in the specification and its equivalents. In *Donaldson*, the Federal Circuit said that "our holding does not conflict with the general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim." In other words, the court was saying that a §112, paragraph 6 "means" element does not need to be "imported or read into" a means-plus-function claim because the specification's limitations and their equivalents are already in the claim by virtue of §112, paragraph 6's command. Thus, the Federal Circuit said (16 F.3d at 1195): "*What we are dealing with in this case is the construction of a limitation*

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*already in the claim in the form of a means-plus-function clause and a statutory mandate on how that clause must be construed."*

Based on the foregoing, the Applicant respectfully submits that the rejection of Claims 1 and 40, as well as the claims that depend therefrom lacks proper foundation and that the rejection should be withdrawn. Those claims, each of which include means plus function limitations, should have been interpreted in view of the specification as required by *In re Donaldson*. If those claims had been so interpreted, they would have been allowable since the cited references do not, singly or in combination, teach, suggest or provide motivation or incentive for the subject matter recited in those claims.

4. Rejection of Claims 9, 13-18, 20-39 and 50-53 under 35 U.S.C. § 103(a).

Claims 9, 13-18, 20-39 and 50-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Abraham (U.S. No. 5,592,482) in various combinations with:

- (1) Tsai (U.S. Patent No. 5,161,012);
- (2) Ostrover (U.S. Patent No. 6,351,596);
- (3) Filisan (WIPO No. WO 99/37092);
- (4) Manis et al. (U.S. Application Publication 2004/0006484);
- (5) Gray et al. (U.S. Application Publication 2004/0163130);
- (6) Ellis (U.S. Application Publication 2004/0103434);
- (7) Na (U.S. Patent No. 5,296,931); and
- (8) Bullock et al. (U.S. Patent No. 6,246,868).

All the above claims, Claims 9, 13-18, 20-39 and 50-53, depend from independent claims whose patentability over the cited reference has been demonstrated, wherein these claims should be considered *a fortiori* allowable.

However, in deference to a number of these claims there is also described additional patentable distinction whose rejection is not supported by the relied-upon

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combination of references.

Numerous problems exist with this set of obviousness rejections, including all claim limitations are not taught, rejection based only on similarity of inventive concept or idea, modification based on hindsight in view of applicant's teaching, new principle of operation utilized, solved a different problem, new and unobvious results, lack of specificity of suggestion to modify, "plain meaning" of recited elements ignored, elements in references are not equivalent, references do not add up to the invention, unworkable combination, impossible to combine, proposed combination renders reference unsuited for intended purpose, no need of element within references, unsuggested combination, no motivation to combine, obvious to try is not a standard of obviousness, and reference teaches away from invention.

By way of example, dependent Claim 20 and Claim 21 recite the integration of IR-mouse functionality to extend the abilities of the server to legacy media devices which are not configured for operation on a PLC network. The device disclosed in the Tsai '021 reference is improperly considered to equate to that which is recited in Claims 20-21. Tsai '021 describes an enhancement for *"wireless video signal remote control systems"* (see first sentence of Background, Col. 1, Lines 7-8). The enhancement by Tsai '021 separates the command signals from the video signals, and sends the command signals to the remote device over the power-lines instead of by a radio-frequency link. This has little bearing on the elements recited in Claims 20-21, as Tsai does not describe functionality for a server. In addition the Tsai teachings are not combinable with Abraham, which transmits video and control signals over the power-line, and clearly does not describe *"an infrared (IR) mouse connected to said server for converting commands from said server into infrared (IR) commands configured for being received and interpreted by a media device having an infrared (IR) control port"* as required to support this portion of the rejection. Tsai '021 does teach an infrared device in the form of a repeater as exemplified by *"IR-retransmitter 112"*; however it is

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not coupled to a server for converting server commands for use by legacy devices. Tsai '021 can even be considered to teach away from the combination with Abraham, as the invention states (col. 1, lines 37-39) *"Remote control signals and video signals fall in the same bandwidth, and it is difficult to separate these signals"*. It should also be recognized that Tsai '021 can not be combined with Abraham '482, as it could be more accurately considered an alternative. Also, aspects of the references conflict as to the communication of signals. No detailed description, as required, has even been put forth on how these reference would be combined to yield this aspect of Applicant's invention. Furthermore, there exists no suggestion, motivation or incentive for attempting the combination in the first place.

Therefore, dependent claims 9, 13-18, 20-39 and 50-53 depend from independent claims whose patentability has already been demonstrated and many of the claims provide additional patentable distinctions over the cited references. The Applicant respectfully requests that these rejections be withdrawn.

5. Rejection of Claims 55 - 58 under 35 U.S.C. § 103(a).

Claims 55 - 58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hung et al (U.S. Published Application 2004/0232768) in view of Cho (U.S. Published Application 2004/0087214).

Although Applicant does not necessarily agree with the grounds for rejection, claims 55-58 have been canceled in order to expedite allowance of the Application. Applicant reserves the right to pursue the original scope of these claims at a future time.

6. Amendment of Specification.

The amendments to the specification were made for correcting syntax and grammatical errors.

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7. Amendment of Claims 2, 4-7, 11, 21, 24, 40-41, 46, 48 and 51.

Claim 2. The amendment includes more description about the server aspects of the invention which is in line with Claim 1, and expands on how the server can communicate in the network; *"from one or more said media devices"*, although this aspect should be evident from the description of the network.

Claims 4, 51. Claims 4 and 51 were amended to add commas to correct a minor punctuation problem.

Claims 5, 6. Claims 5 and 6 were amended to increase clarity by including the term *"wireless"* describing the remote control, although it should be evident from the description of how the remote control utilizes infrared signals as recited in Claim 6.

In addition the grammatical mistake in Claim 6 as noted by the Examiner was corrected.

Claim 7. Claim 7 was amended to recite with greater particularity the use of commands received from the remote control. The wording is in line with original Claim 19 and also supported throughout the specification, such as at paragraphs 11, 12, 14, 105, 143, and so forth.

Claim 11. Claim 11 was amended to correct claim dependency as noted by Examiner.

Claim 21. Claim 21 was amended to include information about use of the remote control signals as previously recited in Claim 1 and Claim 19.

Claim 24. Claim 24 was amended to improve grammatical flow with the word "the" being removed.

Claim 40. Claim 40 was amended similarly to Claim 2 to specify the client-server aspects with greater clarity and adopted preamble portions from Claim 1. In addition, the use of the remote control signals was additionally qualified as found in original Claim 19 with similar wording to amended Claim 7.

Claim 41. Claim 41 was amended to put the language in line with that of

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amended Claim 40.

Claim 46. Claim 46 was amended to describe the use of the remote control commands with greater particularity, such as originally found in Claim 19 and similar to the changes made for Claim 7 and Claim 40.

Claim 48. Claim 48 was amended in a similar manner to independent Claim 40 to include a more detailed preamble, like in Claim 1, and to recite client-server and remote control aspects with greater clarity as found in other claims.

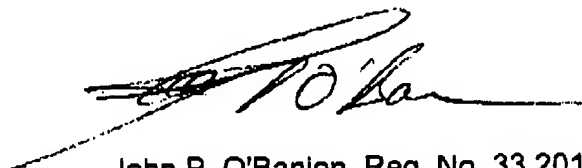
8. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn, and that a Notice of Allowance be issued for the present Application to pass to issuance.

In the event any further matters remain at issue with respect to the present Application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this Application.

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Respectfully submitted,



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